

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2006

*In the Matter of the Adoption of
Amendments to the Wyoming
Rules of Appellate Procedure*

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IN THE SUPREME COURT
STATE OF WYOMING
FILED

JUL 26 2006


JUDY PACHECO, CLERK

**ORDER APPROVING AMENDMENTS TO THE
WYOMING RULES OF APPELLATE PROCEDURE**

The Permanent Rules Advisory Committee, Appellate Division, has recommended that the Court amend the Wyoming Rules of Appellate Procedure. The proposed amendments are attached hereto. The Court, having examined the proposed amendments, finds the amendments advisable. It is, therefore,

ORDERED that the amendments to the Wyoming Rules of Appellate Procedure, attached hereto, be, and hereby are, adopted by the Court to be effective December 1, 2006; and it is further

ORDERED that the amendments to the Wyoming Rules of Appellate Procedure, attached hereto, shall be published in the advance sheets of the Pacific Reporter, the Wyoming Reporter, and in the Wyoming Court Rules; and that the amendments to the Wyoming Rules of Appellate Procedure shall thereupon be spread at length upon the journal of the Court.

DATED this 26th day of July, 2006.

BY THE COURT:


BARTON R. VOIGT
Chief Justice

Wyoming Rules of Appellate Procedure

Rule 2.01. How and when taken; cross-appeals and dismissals.

(a) An appeal from a trial court to an appellate court shall be taken by filing the notice of appeal with the clerk of the trial court within 30 days from entry of the appealable order and concurrently serving the same in accordance with the provisions of Rule 5, Wyo. R. Civ. P., (or as provided in Wyo. R. Cr. P. 32 (c)(4)). The pro se filing of a notice of appeal by an inmate confined in a penal institution is additionally subject to the provisions of Rule 14.04. Within five days of the filing of the notice of appeal with the clerk of the trial court, a copy of the notice of appeal shall also be filed with the clerk of the appellate court, and in a criminal case upon the office of public defender and the office of attorney general.

Rule 2.05. Certification of transcript request, statement of evidence, or agreed statement.

Concurrently with filing the notice of appeal, appellant must order and either make arrangements satisfactory to the court reporter for the payment for a transcript of the portions of the evidence deemed necessary for the appeal or make application for in forma pauperis status as provided in Rule 10.07. A certificate of compliance with this rule shall be endorsed upon or filed with the notice of appeal. If appellant does not intend to order a transcript, the certificate of compliance shall include a statement indicating whether appellant intends to procure a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08.

Rule 3.03. Statement of evidence or proceedings when no report was made or when the transcript is unavailable.

If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, appellant may prepare a statement of the evidence or proceedings from the best available means including appellant's recollection. The statement shall be filed and served on appellee within 35 days of the filing of the notice of appeal. ~~Appellee, who may file and serve objections or propose amendments within 15 days after service. The trial court shall, within 10 days, enter its order settling and approving the statement of evidence, which statement and any objections or proposed amendments shall be submitted to the trial court for settlement and approval and as settled and approved shall be included by the clerk of the trial court in the record on appeal.~~

Rule 3.05. Designation, transmission and retention of record.

(a) Within three working days after the record has been completed (or as otherwise arranged with the clerk of the appellate court), the clerk of the trial court shall advise the clerk of the appellate court in writing that the record has been completed, reciting that the record, including the transcript or parts ordered for inclusion (or that no transcript was created and/or ordered) and necessary exhibits, is complete for purposes of the appeal and certified in

accordance with these rules. The clerk of the trial court's advisement shall also include a statement indicating whether the trial court has approved a statement of evidence pursuant to Rule 3.03 or an agreed statement pursuant to Rule 3.08. Within five working days after the record has been completed, the clerk of the trial court shall number each page in the record, prepare an index, and provide copies of the index to the clerk of the appellate court and to the parties. After the remainder of the steps in subparagraph (b), (c), and (d) of this rule are completed, the clerk of the trial court shall transmit to the appellate court the designated portions of the record within five working days after a request by the clerk of the appellate court which notes the reply brief has been filed or the time for filing the reply has expired.

Rule 3.08. Agreed statement.

(a) In lieu of designations of the record, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the trial court, and may set forth those facts averred and proved, or sought to be proved, which are essential for review. The parties shall notify the clerk of the trial court in writing at the time the notice of appeal is filed that an agreed statement will be used as the record.

(b) The statement shall include: a concise statement of the points on which appellant relies; a copy of the judgment or appealable order; and a copy of the notice of appeal with its filing date. The statement, together with such additions as the trial court may consider necessary to present the questions raised on appeal, shall be approved by the trial court and be certified to the appellate court as the transmitted record. The statement shall be filed with the clerk of the trial court within sixty days of the filing of the notice of appeal shall be filed with the trial court within 45 days of filing the notice of appeal. The trial court shall, within 15 days, enter its order adopting the statement, or promptly set it for hearing to resolve any disputes. The order and statement shall be included by the clerk of the trial court in the record on appeal.

Rule 7.13. Guardian ad litem.

(a) A lawyer appointed as a guardian ad litem (GAL) by a district court, or a lawyer retained to represent a GAL, may participate in any appeal involving the matter for which the GAL has been appointed.

(b) Brief of GAL. A GAL may submit a brief in support of any party to an appeal. If the GAL does not support any party, the GAL may submit a brief only with the permission of the court, which may be granted upon motion of the GAL made on or before the time specified in Rule 7.12. All provisions of Rule 7.12 shall apply to a GAL who does not support any party. If the GAL supports a party:

(1) The brief of the GAL shall be submitted on or before the time specified for the party whom the GAL supports.

(2) The brief of the GAL shall comply with Rule 7.01, except that no statement of issues, statement of the case, or an appendix shall be required. In addition, the cover page must identify that the brief is being submitted by a GAL and indicate whether the brief supports affirmance or reversal.

(3) The brief of the GAL shall not exceed 35 pages, and shall otherwise conform to the requirements of W.R.A.P. 7.05.

(4) A GAL who supports an appellant is not permitted to file a reply brief.

(c) Oral argument. Unless otherwise ordered by the court, a GAL's argument may not exceed 10 minutes, which shall be in addition to the time allotted to the parties pursuant to Rule 8.02. If more time is desired, the request must be made by motion at the time of filing the GAL's brief. The court may make such order as it deems proper.

Rule 8.02. Procedure; time allowed for argument.

In oral argument, appellant shall be entitled to the opening. Appellee may then be heard. Appellant may then conclude. Unless otherwise ordered by the court, each side may not exceed 30 minutes in argument. If the appeal involves a guardian *ad litem*, he or she may be entitled to additional time pursuant to Rule 7.13(c). If more time is desired, the request must be made at the time of filing the brief in the case. The court may make such order as it deems proper

Rule 9.07. Application for rehearing.

(a) An application for rehearing of a case in the appellate court shall be by petition to that court, signed by counsel, briefly stating the points wherein it is alleged that the appellate court has erred, and shall be filed within 15 days after the decision is rendered. The petition shall be accompanied by a brief covering the points and authorities upon which the petitioner relies. The petition and brief may be combined and filed as one document. A copy of the petition and the brief shall, within the time above specified, be served upon all parties. There shall be no oral argument on petitions for rehearings unless argument is requested by the appellate court.

(b) Rule 1.01 applies

Rule 12.11. Review by supreme court.

(a) An aggrieved party may obtain review of any final judgment of the district court by appeal to the supreme court.

(b) If the final judgment of the district court is appealed to the supreme court, the filing of the record, briefs, and oral argument in the supreme court shall be as in civil cases pursuant to Rules 1.01, ~~4~~ 3, 7, and 8.

Rule 13.03. Petition and response to petition.

(a) A petition for a writ of review must be filed with the reviewing court within 15 days after entry of the order from which relief is sought.

(b) Any party may file a response within 15 days after filing of the petition.

(c) The reviewing court may grant the petition anytime after the ~~22nd~~ 30th day or as soon as both the petition and the response have been filed with the reviewing court, but it shall be

deemed denied if the reviewing court does not accept review within 30 40 days from the date of the petition.

(d) Rule 1.01 applies.

Rule 14.04. Pro se filings by inmates.

Any document under these rules which is filed pro se by an inmate who is confined in a penal institution and who is a party in either a civil or criminal case is timely filed if that document is deposited in the institution's internal mail system on or before the last day allowed for filing by these rules or by court order. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing shall be shown by a written certification appended to the document that the document was so filed or the appearance on the inmate mailing of a stamp indicating the date of its receipt by the institution's mail system.

Rule 15. Petition for reinstatement.

An application petition for reinstatement of a case in the appellate court, after dismissal, shall be by petition to the appellate court, signed by counsel, stating the reasons, and supported by a showing, in writing, as may be essential. The application petition shall be filed within 15 days after the order of dismissal has been made, and shall be accompanied by a brief containing the points and authorities upon which petitioner relies. The petition and brief may be combined and filed as one document. Rule 1.01 applies. A copy of such petition, as well as the brief, shall also be served on the counsel for opposing party who may have appeared in the appellate court in the case within the above-specified time. Counsel for opposing party shall have 15 days after such service within which to file with the court any objections to the petition, together with a brief covering the points and authorities upon which the opposing party relies. The opposing party shall also serve upon counsel for the petitioner a copy of the objections and brief. There shall be no oral argument on the petition and the objections, unless requested by the court.

Rule 16. Motions.

(a) Motions submitted to an appellate court shall be filed with the clerk and served in accordance with Wyo. R. Civ. P. 5.

(b) A motion directed to a subject matter which may substantially affect the disposition of a case shall, at the time of filing, be supported by a memorandum of points and authorities. The motion and memorandum may be combined and filed as one document. Rule 1.01 applies. Upon filing, such motion and memorandum shall be served upon the adverse party or the attorney of record who, within 15 days after service, may file and serve a similar memorandum. The court may resolve a motion without oral argument, or may order a hearing. All motions not previously determined shall be heard or submitted at the time regularly assigned for the hearing of the case. All motions shall be in the same form as described in Rule 7.05(b). Each motion filed must be accompanied by a proposed order.

APPENDIX I.
TIMETABLE FOR LAWYERS ON APPEAL

(Unofficial)

(w/in = within; N of A = Notice of Appeal;
D. Ct. = District Court; S.Ct. = Supreme Court;
Tr. Ct. = Trial Court; App. Ct. = Appellate Court)

| Procedure | Filed in: | When | Served |
|---|------------|---|---|
| Notice of Appeal (Wyo. R. App. P. 2.01, 2.02, 2.03) | Tr. Ct. | w/in 30 days after entry of judgment, or appealable order; or w/in 15 days thereafter for excusable neglect; or w/in 15 days after original notice filed, for any other party; or w/in 30 days from entry of order made on motions 50(b), 52(b), and 59 W.R.C.P.; 29(c), 33, and 34 W.R. Cr. P; or w/in 30 days after above motions deemed denied | By appellant |
| Transcript Ordered (2.05) | From Repr. | Concurrently with filing N of A | Evidence of order filed or endorsed on N of A |
| Designate transcript (2.05, 3.02) | Tr. Ct. | With N of A | Appellant |
| Bond for Costs (4.01) | Tr. Ct. | When N of A filed | |
| Supersedeas Bond (4.02) | Tr. Ct. | At or before filing N of A | |

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|--|---------------|--|---|
| Docket Fee (2.09) | Tr. Ct. | With N of A | Appellant |
| Designate Record (3.05) | Tr. Ct. | With brief With response brief With reply brief | Appellant Appellee Appellant |
| Statement of Evidence when no transcript (3.03) | Tr. Ct. | Appellant prepares w/in 15 days after service appellee may amend or object | Serve on appellee Serve on appellant |
| Transmitting Record (3.05) | Tr. Ct. Clerk | w/in 5 working days after reply brief filed or due | To clerk of App. Ct. |
| Time for filing briefs (7.06) | App. Ct. | w/in 45 days after service of notice case docketed in App. Ct. w/in 45 days after service of appellant brief, appellee must file w/in 15 days after service of appellee brief, appellant may file reply brief | Served by appellant, see 1.01 Served by appellee, see 1.01 See 1.01 |
| Amicus Curiae Brief (7.12) | App. Ct. | Filed w/in time allowed to party amicus supports 11 days after principal brief of party being supported, or 11 days after first brief of any party | |
| Settings (8.01) ..Expedited docket | App. Ct. | App. Ct. clerk will notify by mail w/in 15 days after entry of order assigning to expedited docket | All counsel |
| ..Objection to expedited docket | Any party | | |
| ..Oral argument | App. Ct. | Clerk will notify by | All counsel |

| | | | |
|--|----------|--|-----------------------------------|
| | | mail or telephone | |
| Rehearing (9.07) | App. Ct. | w/in 15 days after decision | Serve on opposing party, see 1.01 |
| ..Answer to application for rehearing (9.09) | App. Ct. | w/in 15 days after rehearing granted | Serve applicant, see 1.01 |
| Mandate (9.10) | App. Ct. | w/in 15 days after decision, or after denial of rehearing | To all counsel |
| Certification of questions of law (11) | | | |
| ..Briefs (11.06) | App. Ct. | w/in 45 days from notice to all parties of agreement to answer | Appellant |
| | | w/in 45 days from service of appellant brief | Opposing party |
| Administrative agency review (12) | | | |
| ..Petition Filed (12.04) | D. Ct. | w/in 30 days after agency written notice of decision; or w/in 30 days thereafter if D.Ct. extends time period (Appellant orders transcript when petition filed) | |
| ..Record transmitted (12.07) | D. Ct. | w/in 60 days after service of petition or as allowed by D. Ct., agency shall transmit record to D. Ct. Notice of transmittal by agency, by personal letter to judge and notice to all parties. | |
| ..Motion for certification (12.09) | D. Ct. | w/in 30 days of filing petition for review | Any party |
| ..Response to motion for certification (12.09) | D. Ct. | w/in 15 days from service of motion | Any party |
| ..Certification (12.09) | D. Ct. | Not later than 60 days after | |

petition for review
filed, but not sooner
than 15 days after
motion for
certification filed

Writ of Review (13)

·Petition (13.03)

App. Ct.

w/in ~~11~~15 days of
entry of order
from which review
is sought

Any party

·Response to
petition

App. Ct.

w/in ~~11~~15 days of
filing of petition

Any party

Time Computation
(14)

Reinstatement after
dismissal
(15)

App. Ct.

w/in 15 days after
dismissal
w/in 15 days of
service opponent
may serve
objections and briefs

Motions
(16)

App. Ct.

~~Prior to filing,~~
eCopy of motion and
memo of authorities
shall be served on
adverse party or
attorney
w/in 15 days of
service, any
response to motion